

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TED ALLEN,	:	Case No. 3:16-cv-474
	:	
Plaintiff,	:	District Judge Walter H. Rice
	:	Magistrate Judge Sharon L. Ovington
vs.	:	
	:	
COMMISSIONER OF THE SOCIAL	:	
SECURITY ADMINISTRATION,	:	
	:	
Defendant.	:	

DECISION AND ENTRY

This case is before the Court upon Plaintiff's Motion for Allowance of Attorney Fees (Doc. #15). The Commissioner has neither responded to nor opposed this Motion.

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$11,962.50. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount the Motion seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$3,800.00 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA). (Doc. #s 13-14). The EAJA award, however, was subject to offset in the amount of any debt Plaintiff owed the Government. *See* Doc. #14. Plaintiff's counsel indicates that her office received the EAJA fee on March 5, 2018. Counsel may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work.

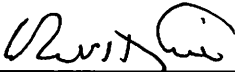
Plaintiff's counsel must therefore return to Plaintiff the amount of EAJA fees she has actually received. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

IT IS THEREFORE ORDERED THAT:

1. The Motion for Allowance of Attorney Fees filed by Plaintiff's attorney (Doc. #15) is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$11,962.50;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees she has actually received under the Equal Access to Justice Act (Doc. #14); and
4. The case remains terminated on the docket of this Court.

IT IS SO ORDERED.

Date: 5.3.14



Walter H. Rice
United States District Judge